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JAN 14 1994

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January 14, 1994

Mr. William F. Caton, acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

In re: CC Docket No. 93-292
Comments
The Ericsson Corporation

Dear Mr. Caton:

Transmitted herewith, on behalf of The Ericsson Corporation, is an original and eleven copies of the "Comments of the Ericsson Corporation" for filing in the above-referenced proceeding.

Should there be any questions with regard to this matter, kindly communicate directly with the undersigned.

Very truly yours,



David C. Jatlow
Counsel for The Ericsson Corporation

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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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In the Matter of)
) CC Docket No. 93-292
Policies and Rules)
Concerning Toll Fraud)

To: The Commission

Comments of The Ericsson Corporation

The Ericsson Corporation, on behalf of itself and affiliated and subsidiary companies (hereinafter collectively referred to as "Ericsson"), by its attorney hereby submits its comments in CC Docket No. 93-292.¹ In support of its comments Ericsson states the following:

I. Introduction

Ericsson is a manufacturer of telecommunications systems and equipment. Included in the products it manufactures and markets is PBX equipment used in a wide variety of private applications. As such, it is familiar with the problems associated with PBX toll fraud and the issues raised by the Commission in this proceeding. Though the NPRM deals with a variety of toll fraud

¹ In the Matter of Policies and Rules Concerning Toll Fraud, CC Docket No. 93-292, 8 FCC Rcd 8618 (released December 2, 1993) (hereinafter referred to as "NPRM").

issues, including PBX fraud, payphone fraud, cellular fraud and Line Information Database fraud, Ericsson's comments are limited to issues dealing with PBX fraud.

II. Discussion

A. General Issues

Ericsson is fully aware that PBX toll fraud is a problem today in view of a number of advanced features available on CPE including remote access and remote diagnostic capabilities of advanced PBX equipment. Ericsson applauds the Commission's efforts to take realistic regulatory steps to prevent, to the extend possible, such fraud.

Thus, in response to the general question the Commission poses on whether it should encourage the adoption of legislation which will assist in the detection and prosecution of toll fraud, Ericsson submits the answer is clearly, yes. All parties affected by toll fraud, including, but not limited to, CPE manufacturers, equipment distributors, IXCs, LECs and consumers will benefit from increased law enforcement activity designed to curb the abuses which have led to the institution of this proceeding. Until such time as legislation can be introduced, passed and implemented, however, the problem of toll fraud will continue to exist. Therefore, Ericsson agrees with the statement of Commissioner Barrett issued when the NPRM was released that the industry must move forward to eliminate problems rather than engaging in activity designed solely to limit one's liability for toll fraud.

Notwithstanding its agreement with Commissioner Barrett's sentiments, Ericsson submits that as the Commission considers the difficult issues raised in the NPRM, it should keep in mind certain commercial realities specifically related to the PBX market.

First, the PBX market is extremely competitive. Growth has been flat for the past several years and prices for equipment have been declining. In addition to competitive equipment offerings of the CPE manufacturers, the PBX market has been subject to increased competition from the Centrex service offerings of the LECs. Thus, manufacturers of PBX equipment look for every advantage in trying to increase sales and market share. Indeed, one way PBX manufacturers promote their equipment in today's competitive market place is to incorporate anti-toll fraud security functions in PBX equipment.

Second, because Commission rules and regulations can impose some additional costs on those parties to which the regulations apply, the Commission should be careful not to adopt rules which could have a tendency to reduce competition in the already competitive PBX market.

Third, PBX toll fraud can be effectively controlled if parties that purchase such equipment use all reasonable means to protect against fraud. These means include, but are not limited to, familiarizing themselves with appropriate security features

designed to protect against toll fraud;² exercising adequate supervision of PBX facilities; exercising adequate supervision over employees and agents; taking advantage of the many services offered by carriers and others to protect against toll fraud and taking advantage of the educational opportunities most equipment manufacturers offer on how to guard against PBX toll fraud.³

Thus, though Ericsson believes there is a general problem with respect to PBX toll fraud, it believes responsible supervision by the owner and operator over its CPE will eliminate, to the greatest extent possible, the bulk of PBX toll fraud. To ensure that owners of CPE are aware of reasonable steps that can be taken to protect against PBX toll fraud, Ericsson believes the only addition to Part 68 which may be appropriate at this point in time is a rule which requires the manufacturer of a PBX which offers features that allow remote access to insert a warning in the documentation that provides notification that toll fraud can be committed based on improper

² For example, Ericsson's MD110 PBX has a number of security features designed to prevent PBX toll fraud. With respect to the remote access feature, failure to provide the proper code to gain access to dial tone will, after 3 attempts, disconnect the line. Similarly, with respect to the remote diagnostic features of the MD110, Ericsson has incorporated a number of different levels of security to prevent unauthorized access to features and functionalities of the PBX which could be used to commit PBX toll fraud.

³ For example, as part of its periodic user group meetings, Ericsson has provided detailed instructional information on how to reduce toll fraud. This information has included descriptions of features, functions and options to control toll fraud on Ericsson's MD110 PBX. In addition to literature, Ericsson has also offered seminars to its users groups on toll fraud.

use of the PBX as is more specifically described below. Once having provided such notification, Ericsson believes that a PBX manufacturer should not have any further liability for toll fraud.

B. Shared Liability

The NPRM asks a series of questions designed to elicit information on factors to be considered when liability determinations should be made. The NPRM asks if liability should be apportioned on the basis of which party is in the best position to protect against fraud and/or if the concept of shared liability should be used. If the concept of shared liability is used, the NPRM asks how responsibilities of each party should be defined.

Ericsson believes liability should be placed on the party that is in the best position to avoid, warn of, or control toll fraud. This position is consistent with the position taken by the Commission when it rendered its decision in *Chartways Technologies, Inc. v. AT&T Communications*⁴ and *United Artists Payphone Corp. v. New York Telephone Co. and American Telephone and Telegraph Co.*⁵ In each of those cases the FCC fully evaluated the facts and imposed liability on the party that was

⁴ *Chartways Technologies, Inc. v. AT&T Communications, Inc.*, Memorandum Opinion and Order, FCC 93-394 (released August 19, 1993).

⁵ *United Artists Payphone Corp. v. New York Telephone Co. and American Telephone and Telegraph Co.*, Memorandum Opinion and Order, FCC 93-387 (released August 18, 1993).

in the best position, under the circumstances, to protect against fraud. For example, because the FCC found in the Chartways case that AT&T had complied with its duties and Chartways had admittedly done nothing to protect against PBX toll fraud, the Commission found Chartways liable for the toll charges in question.

Though large PBX owners are generally sophisticated users of telecommunications equipment and generally take steps to protect against toll fraud, there are PBX owners who are not as sophisticated. Thus, while Ericsson believes the owner of the equipment must take responsibility for operating its equipment in a manner that will protect against toll fraud, Ericsson believes PBX owners should be apprised that problems in this regard can occur. Once such warnings are provided, Ericsson submits insofar as equipment manufacturers and CPE owners are concerned, it is the owner of the equipment that should be fully liable.⁶

A regulatory policy which places liability on the party in the best position to guard against toll fraud will have the added benefit of creating an incentive for manufacturers, carriers, distributors and owners of PBX equipment to exercise a requisite degree of responsibility to assure to the extent possible that

⁶ There are other relationships PBX owners have that are relevant to this discussion. For instance, because carriers offer hardware and software solutions which can be used to protect against PBX toll fraud, the Commission should obviously issue rulings on what duties are owed by each party to the other party for the purposes of determining which party is in the position to protect against toll fraud.

toll fraud does not occur.

C. Manufacturers' Responsibilities

Having demonstrated that toll fraud liability should rest with the party being in the best position to protect against it, there is still the issue of what constitutes a failure to meet one's responsibilities.

To the extent the Commission deems it necessary to impose specific rules on toll fraud liability, Ericsson submits a manufacturer's responsibility should be limited to warning prospective customers that features of the PBX equipment can be used to commit toll fraud. A manufacturer should not be held to a higher standard than this since once the equipment is sold to a third party the manufacturer generally has no control over the manner in which the PBX is used. Moreover, because many PBXs are sold to distributors who in turn re-sell them to businesses, the PBX manufacturer has no control over oral instructions which may or may not be provided by entities that distribute its product.

D. Proposed Section 68.200(1)

Ericsson believes that proposed Section 68.200(1) is generally satisfactory with a few exceptions.

Ericsson does not disagree that a "prominent and conspicuous warning" should be included in the instructional manual which accompanies the equipment in question. Nor does Ericsson take issue with the proposed rule which requires the manufacturer to warn the customer of specific features that may give rise to PBX toll fraud, including warnings relative to the risks of not

changing default codes in connection with remote access features.

However, Ericsson opposes those portions of proposed Section 68.200(1) which (a) require warnings to be placed on the exterior packaging of the equipment and (b) require the manufacturer to "discuss the financial exposure and measures available to it to limit that exposure" in any but the most basic form.

As to the issue of requiring Part 68 equipment to have a toll fraud warning on the exterior packaging, the rule would not be effective for most PBX equipment. While there may be certain PBX equipment which is small enough to have a "label" or similar notification physically attached to it, most PBX equipment is not of that type. In fact, most PBX equipment is generally rather large from a physical standpoint and, due to security and environmental factors, is located in a location inaccessible to most persons. Accordingly, Ericsson submits that it is unlikely that a label or warning on the physical equipment would actually be seen and would therefore be ineffective. That being so, this portion of proposed Section 68.200(1) would serve only to impose additional costs on manufacturers without providing a corresponding benefit of effectively preventing PBX toll fraud.

As to the proposal to require a manufacturer to "discuss the customer's financial exposure and measures available to limit that exposure," Ericsson believes the Commission's rule is excessively broad. Certainly a manufacturer can "discuss" the fact that toll fraud can be committed. Certainly a manufacturer can describe certain actions that can be taken to reduce the

possibility that toll fraud can be committed. But a manufacturer is neither in a position to know every possible means available to protect against toll fraud, nor to discuss all aspects of the issue of a "customer's financial exposure."

For the foregoing reasons, Ericsson believes the first two sentences of proposed Section 68.200(1) should be revised as follows:

A prominent and conspicuous warning accompanying the equipment and included in the instruction manual for the equipment and, except for PBX equipment, on the exterior packaging of the equipment which warns equipment users of the risks of toll fraud associated with the equipment and its specific features. The warning in the instructional manual should advise the customer that toll fraud can be committed through the use of certain features offered with the equipment and discuss reasonable measures available to limit that exposure.

E. Grandfathering

To the extent the Commission adopts proposed Section 68.2001(1) and requires manufacturers to provide such warnings in instructional information, Ericsson submits new requirements should be applicable only to equipment which has not yet been registered. In the alternative, Ericsson submits that any new requirements should be applicable only to already registered equipment which is manufactured 12 months after the effective date of any Report and Order issued as a result of this proceeding. This is necessary to provide manufacturers sufficient time to draft appropriate documentation and

incorporate such changes into its documentation.

Respectfully submitted,
The Ericsson Corporation

A handwritten signature in dark ink, appearing to read "David C. Jatlow", is written over a horizontal line.

David C. Jatlow
Its Attorney

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January 14, 1994